

114TH CONGRESS
1ST SESSION

S. 2138

To amend the Small Business Act to improve the review and acceptance
of subcontracting plans, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 6, 2015

Mr. VITTER introduced the following bill; which was read twice and referred
to the Committee on Small Business and Entrepreneurship

A BILL

To amend the Small Business Act to improve the review
and acceptance of subcontracting plans, and for other
purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Small Business Sub-
5 contracting Transparency Act of 2015”.

6 **SEC. 2. TRANSPARENCY IN SUBCONTRACTING GOALS.**

7 Section 8(d)(9) of the Small Business Act (15 U.S.C.
8 637(d)(9)) is amended—

9 (1) by striking “(9) The failure” and inserting
10 the following:

1 “(9) MATERIAL BREACH.—The failure”;

2 (2) in subparagraph (A), by striking “sub-

3 section, or” and inserting “subsection,”;

4 (3) in subparagraph (B), by striking “sub-

5 contract,” and inserting “subcontract, or”; and

6 (4) by inserting after subparagraph (B) the fol-

7 lowing:

8 “(C) assurances provided under paragraph

9 (6)(E),”.

10 SEC. 3. AUTHORITY OF THE ADMINISTRATOR OF THE
11 SMALL BUSINESS ADMINISTRATION.

12 Section 8(d)(11) of the Small Business Act (15
13 U.S.C. 637(d)(11)) is amended—

16 “(11) AUTHORITY OF ADMINISTRATION.—In
17 the case of”; and

20 SEC. 4. IMPROVING SUBCONTRACTING PLANS.

21 Section 8(d) of the Small Business Act (15 U.S.C.
22 637(d)) is amended by adding at the end the following:

23 “(17) REVIEW AND ACCEPTANCE OF SUBCON-
24 TRACTING PLANS.—

1 “(A) DEFINITION.—In this paragraph, the
2 term ‘covered small business concerns’ means—
3 “(i) small business concerns;
4 “(ii) qualified HUBZone small busi-
5 ness concerns;
6 “(iii) small business concerns owned
7 and controlled by veterans;
8 “(iv) small business concerns owned
9 and controlled by service-disabled veterans;
10 “(v) small business concerns owned
11 and controlled by socially and economically
12 disadvantaged individuals, as defined in
13 paragraph (3)(C); and
14 “(vi) small business concerns owned
15 and controlled by women.

16 “(B) DELAYED ACCEPTANCE OF PLAN.—
17 Except as provided in subparagraph (E), if a
18 procurement center representative or commer-
19 cial market representative determines that a
20 subcontracting plan required under paragraph
21 (4) or (5) fails to provide the maximum prac-
22 ticable opportunity for covered small business
23 concerns to participate in the performance of
24 the contract to which the plan applies, the rep-

1 resentative may delay acceptance of the plan in
2 accordance with subparagraph (C).

3 “(C) PROCESS FOR DELAYED ACCEPT-
4 ANCE.—

5 “(i) IN GENERAL.—Except as pro-
6 vided in clause (ii), a procurement center
7 representative or commercial market rep-
8 resentative who makes a determination
9 under subparagraph (B) with respect to a
10 subcontracting plan may delay acceptance
11 of the plan for a 30-day period by pro-
12 viding written notice of the determination
13 to head of the procuring activity of the
14 contracting agency that includes rec-
15 ommendations for altering the plan to pro-
16 vide the maximum practicable opportunity
17 described in that subparagraph.

18 “(ii) EXCEPTION.—In the case of the
19 Department of Defense—

20 “(I) a procurement center rep-
21 resentative or commercial market rep-
22 resentative who makes a determina-
23 tion under subparagraph (B) with re-
24 spect to a subcontracting plan may
25 delay acceptance of the plan for a 15-

1 day period by providing written notice
2 of the determination to appropriate
3 personnel of the Department of De-
4 fense that includes recommendations
5 for altering the plan to provide the
6 maximum practicable opportunity de-
7 scribed in that subparagraph; and

8 “(II) the authority of a procure-
9 ment center representative or com-
10 mercial market representative to delay
11 acceptance of a subcontracting plan as
12 provided in subparagraph (B) does
13 not include the authority to delay the
14 award or performance of the contract
15 concerned.

16 “(D) DISAGREEMENTS.—If a procurement
17 center representative or commercial market rep-
18 resentative delays the acceptance of a subcon-
19 tracting plan under subparagraph (C) and does
20 not reach agreement with the head of the pro-
21 curing activity of the contracting agency to
22 alter the plan to provide the maximum prac-
23 ticable opportunity described in subparagraph
24 (B) not later than 30 days after the date on
25 which written notice was provided, the disagree-

1 ment shall be submitted to the head of the con-
2 tracting agency by the Administrator for a final
3 determination.

4 “(E) EXCEPTION.—A procurement center
5 representative or commercial market represent-
6 ative may not delay the acceptance of a subcon-
7 tracting plan if the head of the contracting
8 agency certifies that the need of the agency for
9 the supplies or services is of such an unusual
10 and compelling urgency that the United States
11 would be seriously injured unless the agency is
12 permitted to accept the subcontracting plan.”.

13 **SEC. 5. GOOD FAITH COMPLIANCE.**

14 Not later than 270 days after the date of enactment
15 of this Act, the Administrator of the Small Business Ad-
16 ministration shall issue regulations providing examples of
17 activities that would be considered a failure to make a
18 good faith effort to comply with the requirements imposed
19 on an entity, other than a small business concern, (as de-
20 fined in section 3 of the Small Business Act (15 U.S.C.
21 632)), that is awarded a prime contract containing the
22 clauses required under paragraphs (4) or (5) of section
23 8(d) of the Small Business Act (15 U.S.C. 637(d)).

